

## REMARKS

### Summary of Office Action

Claims 1 and 4-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,513,155 ("Alexander") in view of U.S. Patent No. 6,789,046 ("Murstein").

### Summary of Interview

Applicant thanks the Examiner for taking the time to speak with Applicant's Representatives on July 24th, 2008 to discuss the recent office action. Applicant's Representatives and the Examiner discussed the pending claims and potential amendments; however no agreement was reached as to the claims.

### Summary of Amendments

Claims 1, 4-12, 19-22, 24-28, and 30-36 are pending. Applicant has canceled claims 13-18, 23, and 29. Applicant has amended claims 1, 4, 6, 10, 19, 20, 21, 23, 25, 26, and 27. Applicant has added new claims 31-36.

### Response to Rejections under 35 U.S.C. § 103

Applicant respectfully traverses the rejections. The amendments to the claims are made only for clarification. The amendments are not made in response to the rejections or necessary to comply with any statutory requirement of patentability, since no such amendments are believed to be necessary.

The Office Action rejected claims 1-20 under 35 U.S.C. § 103 as being unpatentable over Alexander in view of Murstein. Applicant respectfully requests withdrawal of these rejections, because the cited references fail to teach or suggest all of the limitations of the claims.

Claim 1 recites a limitation directed to "a counter that collects data describing activity of a performance object within a host offering networked storage services to a set of clients over a network... wherein the performance object is a logical or physical subsystem of the host."

Alexander appears to teach a system and method for profiling code executing on a data processing system. Applicant's claims recite a "performance object...wherein the performance object is a logical or physical subsystem of the host." As stated in the summary, Alexander

teaches "a process and system for profiling executing code." Alexander does not consider profiling a logical or physical subsystem. Further, executing code does not include or equate to a logical or physical subsystem of a host. Thus, Alexander does not teach or suggest the cited limitation.

Similarly, Murstein also does not teach or suggest the claimed limitations to "a counter that collects data describing activity of a performance object within a host offering networked storage services to a set of clients over a network.... wherein the performance object is a logical or physical subsystem of the host." Murstein states that the "present invention relates to ... collecting statistics for a plurality of entities configured as a single entity ... the entities include a plurality of members (e.g. computers, servers, clusters)." Murstein 2:15-20. Such entities are clustered computers where "each member monitors its performance data and logs this data locally to a data store based on a redefined time period and time resolution." Murstein 3:6-62. However, the recited "logical or physical subsystem" is a part of a computing system and is therefore not equivalent to a computing system. Since Murstein requires a computer, server, or cluster, Murstein does not teach or suggest the cited limitation.

Independent claims 10, 13, 19, 21, 23, 25, 27, and 29 recite similar limitations to those discussed above in reference to claim 1. Therefore, claims 10, 13, 19, 21, 23, 25, 27, and 29 are also patentable over the cited art for similar reasons.

Given that claims 4-9, 11-12, 14-18, 20, 24, 26, 28 and 30 directly or indirectly depend from one of the above independent claims, at least for reasons similar to those discussed above, it is respectfully submitted that dependent claims 4-9, 11-12, 14-18, 20, 24, 26, 28 and 30 are patentable over the cited reference.

Applicant has not necessarily discussed here every reason why every pending independent claim is patentable over the cited art; nonetheless, Applicant is not waiving any argument regarding any such reason or reasons. Applicant reserves the right to raise any such additional argument(s) during the future prosecution of this application, if Applicant deems it necessary or appropriate to do so.

Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

If a fee is due, please charge our Deposit Account No. 50-2207, under Order No. 672728060US1 from which the undersigned is authorized to draw.

Dated: August 1, 2008

Respectfully submitted,

By 

Walter K. Coronel

Registration No.: 56,177

PERKINS COIE LLP

101 Jefferson Drive

Menlo Park, California 94025-1114

(650) 838-4300

(650) 838-4350 (Fax)

CORRESPONDENCE ADDRESS

Customer No. 77042

P.O. Box 1208

Seattle, WA 98111-1208

(650) 838-4300